UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte ANDREW RODNEY FERLITSCH

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Appeal 2009-004101
Application 10/650,657
Technology Center 2100

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Decided: March 5, 2010

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Before JEAN R. HOMERE, JAY P. LUCAS, and THU A. DANG,
Administrative Patent Judges.

DANG, *Administrative Patent Judge.*

DECISION ON APPEAL

I. STATEMENT OF CASE

Appellant appeals the Examiner's final rejection of claims 1-47 under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

A. INVENTION

According to Appellant, "[t]he present invention addresses the problem of obtaining information from one or more devices, by selectively using a plurality of query methods" (Spec. 3, ll. 20-22).

B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary and reproduced below:

> 1.   In a system of devices, a policy-driven method for querying, the method comprising:
>
> establishing a plurality of device communication query policies, where each query policy is cross-referenced to methods for communicating a query to a device;
>
> accepting a query, from a client, directed to a device;
>
> selecting a query policy; and,
>
> sending the query to an agent representing the device, using a method responsive to the selected query policy.

C. REJECTION

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Mandal	US 6,170,009 B1	Jan. 2, 2001
Aggarwal	US 6,985,944 B2	Jan. 10, 2006

Claims 1-47 stand rejected under 35 U.S .C. § 103(a) as being unpatentable over the teachings of Aggarwal in view of Mandal.[1]

II. ISSUE

Has Appellant shown the Examiner erred in finding that the combination of Aggarwal and of Mandal would have taught or suggested selecting one of a "plurality of device communication query policies ... cross-referenced to methods for communicating a query to a device" and querying "an agent representing the device, using a method responsive to the selected query policy" (claim 1)?

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Aggarwal

1)   Aggarwal discloses a performance monitoring system that collects fault information, via a proxy process, from data gathering elements ("DGEs") assigned to devices of different networks (col. 3, l. 4 – col. 4, l. 28); i.e., the devices are tested/monitored by the DGE's (col. 6, ll. 57-62).

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[1] The rejection of claims 1 and 25 under 35 U.S.C. § 112, first paragraph (written description requirement), has been withdrawn (Ans. 2).

2)   During system configuration, performance tests and DGE's are associated with the tested devices (col. 5, l. 43 – col. 6, l. 5) and related queries are issued to the DGE's (col. 4, ll. 62-67).

3)   In one example, Internet Control Message Protocol ("ICMP") network monitors use the ICMP protocol to check the reachability of hosts on an Internet Protocol ("IP") network (col. 7, ll. 14-16).

4)   In another example, a Simple Network Management Protocol ("SNMP") manager uses an SNMP agent to monitor and control a managed device (col. 8, ll. 51-60).

Mandal

5)   Mandal discloses a system that allows an operator to specify, via a graphical user interface (GUI), one of multiple policies for controlling devices of a network (Abstract; col. 3, ll. 51-61).

6)   The specified policy is automatically translated into device-specific commands, which are sent to the devices (col. 3, ll. 61-67).

7)   "Dynamic entries" specify parameters of the different policies (col. 4, ll. 15-20; Fig. 2) and create corresponding policy objects, each of which includes data and methods that implement an associated policy (col. 4, ll. 21-29).

8)   The policy objects use device adapters to communicate with the devices via device-specific communication protocols, e.g., Network File System (NFS), database (DB), and Internet (IP) protocols (col. 4, ll. 31-43; Fig. 2).

IV. PRINCIPLES OF LAW

Claim Interpretation

The claims measure the invention. *See SRI Int'l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (en banc). "[T]he PTO gives claims their 'broadest reasonable interpretation.'" *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). "Moreover, limitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

35 U.S.C. § 103(a)

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007).

In *KSR*, the Supreme Court emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art," and discussed circumstances in which a patent might be determined to be obvious. *Id.* at 415 (*citing Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966)). The Court reaffirmed principles based on its precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 416. The operative question in this "functional approach" is thus "whether the improvement is more than the predictable use of prior art elements according to their established functions." *Id.* at 417.

In affirming a determination of obviousness, the Federal Circuit has relied, in part, on an applicant's failure to present evidence that the proposed combination of teachings was "uniquely challenging or difficult for one of ordinary skill in the art" or "represented an unobvious step over the prior art." *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (*citing KSR*, 550 U.S. at 418-19).

V. ANALYSIS

As to independent claim 1, Appellant argues that the combination of Aggarwal and Mandal does not teach or suggest the claimed invention because "Aggarwal's query method is not driven in consideration of a query policy" (App. Br. 7); and because "[u]nlike the Applicant's explicit recitation of a device communication query policy, Mandal describes a more abstract concept of policy as a system level behavior" (*id.* at 8). Appellant further argues that "[i]t would be understood by an expert reading the Applicant's specification that a query method is the specific protocol used to by a client to query a device" (*id.*) and, thus, "Mandal's concept of policy has little application to the Applicant's query policy" (*id.* at 9).

However, the Examiner finds that "Aggarwal discloses a method of distributing queries in a distributed system to monitor and gather performance data regarding devices of the system" (Ans. 11); and that Mandal "teaches selecting a query policy as a user specifying a high level policy" (*id.* at 13). The Examiner states that Mandal's teachings would have provided Aggarwal's system "the benefit of specifying a high-level policy for monitoring devices" and using "policy objects ... that can include methods for implementing the associated policy" (*id.*; citation omitted).

Thus, an issue we address on appeal is whether Appellant has shown the Examiner erred in finding that the combination of Aggarwal and Mandal would have taught or suggested selecting one of a "plurality of device communication query policies ... cross-referenced to methods for communicating a query to a device" and querying "an agent representing the device, using a method responsive to the selected query policy" (claim 1).

We begin our analysis by giving the claims their broadest reasonable interpretation. *See In re Bigio*, 381 F.3d at 1324. Furthermore, our analysis will not read limitations into the claims from the specification. *See In re Van Geuns*, 988 F.2d at 1184.

Contrary to Appellant's arguments, neither claim 1 nor Appellant's disclosure precludes the recited "query policy" from relating to system-level behavior or requires it to relate to communication protocols. Claim 1 merely recites that the "query policy" is selected from "device communication query policies ... cross-referenced to methods for communicating a query to a device" and that a query is sent a device agent "using a method responsive to the selected query policy." Appellant's disclosure merely states that "the term 'query policy' means one or more groups of query methods" and provides a list of communication protocols that query methods may include (Spec. 4, ll. 5-13). Therefore, we will not confine the meaning of "query policy" or "method" to the definitions asserted by Appellant's arguments. Rather, in addition to its recited meaning, we interpret a "query policy" as being one or more groups of methods for querying devices.

Aggarwal discloses a system that queries data gathering elements ("DGEs") used for testing/monitoring devices (FF 1). During system configuration, tests and DGE's are associated with devices and related

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queries are issued to the DGE's (FF 2). An ordinarily skilled artisan would have understood Aggarwal's system as querying a device agent, as required by claim 1, by way of sending queries to the DGE's.

Mandal discloses a system that specifies, via a GUI, one of multiple policies for controlling devices (FF 5). A specified policy is translated into device-specific commands, which are sent to the devices (FF 6). A "dynamic entry" specifies the parameters of the policy and creates a "policy object" defining the data and methods that implement the policy (FF 7). The policy objects use device adapters to communicate with the devices via device-specific protocols, e.g., NFS, DB, and IP protocols (FF 8).

The ordinarily skilled artisan would have understood Mandal's specifying of a policy as teaching or suggesting the recited selecting of a "query policy," because Mandal's policies are each cross-referenced to one or more groups of methods for querying devices. More particularly, the device-specific commands of each policy are cross-referenced to a policy object (via a dynamic entry) for implementing that policy and, in turn, cross-referenced to the device-specific communication protocols (via the device adapters) that allow the policy object to communicate with the devices.

We agree with the Examiner's finding that it would have been obvious, in view of Mandal, to give Aggarwal's system a means of establishing query policies (e.g., GUI instructions) and corresponding policy objects having methods to implement those policies (Ans. 13). Mandal's teachings would also give Aggarwal's system a means of associating those policies with the device-specific protocols needed to communicate related queries. In that regard, we note that Aggarwal's system also uses device-specific protocols, e.g., SNMP and ICMP (FF 3-4).

We conclude that the above application of one known element (Aggarwal's querying of a device agent to monitor devices) with another known element (Mandal's selection of policies cross-referenced to respective methods for communicating with devices) would have yielded predictable results to a skilled artisan. That is, selecting a policy (reference by Mandal's GUI instructions) to query device agents (Aggarwal's DGE's) via query methods cross-referenced to that policy (by Mandal's policy and device objects) is no more than a simple arrangement of old elements performing their known functions and yields no more than expected results. *See KSR*, 550 U.S. at 417. Further, Appellant has presented no evidence that such an arrangement of known elements was "uniquely challenging or difficult for one of ordinary skill in the art" or otherwise "represented an unobvious step over the prior art." *Leapfrog*, 485 F.3d at 1162 (*citing KSR*, 550 U.S. at 418-19).

For the above reasons, Appellant has not shown the Examiner erred in finding that the combination of Aggarwal and Mandal would have taught or suggested the selecting one of a "plurality of device communication query policies ... cross-referenced to methods for communicating a query to a device" and querying "an agent representing the device, using a method responsive to the selected query policy" (claim 1).

Accordingly, Appellant has not shown the Examiner erred in rejecting claim 1, and dependent claims 2-24 falling therewith, under 35 U.S.C. § 103(a) as unpatentable over the combination of Aggarwal and Mandal. As Appellant does not provide separate arguments for independent claim 25, claim 25 and dependent claims 26-47 fall with representative claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii). We therefore also affirm the rejection of

claims 25-47 under 35 U.S.C. § 103(a) as unpatentable over the combination of Aggarwal and Mandal.

VI. CONCLUSION

Appellant have not shown the Examiner erred in finding that claims 1-47 are unpatentable over the combination of Aggarwal and Mandal.

VII. DECISION

We affirm the Examiner's decision rejecting claims 1-47 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

<u>AFFIRMED</u>

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